

GENERAL SERVICES DIVISION



UPDATE

MONTANA STATE LIBRARY
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The quarterly newsletter of the General Services Division
Montana Department of Administration • Website address: <http://www.discoveringmontana.com/doa/gsd> Summer 2002

PROCUREMENT NEWS AND NOTES

Contract Administration Training. Agencies should be watching this fall for a class on contract administration being developed by the staff of the State Procurement Bureau. After attending a five-day course sponsored by George Washington University, Penny Moon will be teaching a course on such topics as performance monitoring, problem resolution, contract modifications, subcontracting, contract payments, and contract termination.

Sending Requisitions to the Right Place. Several agencies have been using the option of sending WORD requisitions to the State Procurement Bureau. This is a reminder that those requisitions need to be sent to the "State Procurement Bureau" address in Outlook, not to the individual SPB contracts officer.

Year-end Kudos. A special thanks to all of the procurement officials around the state who were great about getting year-end requisitions in on time. We appreciate it!

New GSD Website. The newly expanded, completely redesigned and combined website for the General Services Division is now up and running. The site is located at: <http://www.discoveringmontana.com/doa/gsd>. You'll find it jammed with great information for procurement officials, facilities managers, and the business community.

New Rules in the Making. The State Procurement Bureau has been working on several areas of new or revised rules. A major change is being proposed in the area of vendor/contractor debarment. In addition, rules are being drafted concerning contract

modifications. Agencies will have a chance to comment on the proposed rules once the drafting process is complete.

Procurement Legislation. The General Services Division does not plan on requesting any specific legislation for the 2003 legislative session. However, agencies are reminded of the opportunity to explore "alternative procurement methods" with the Department of Administration as provided by the last legislative session. If you are encountering a procurement problem that doesn't seem to be particularly well suited to the traditional Request for Proposal or Invitation for Bid methods, contact the State Procurement Bureau at 444-3315 to explore other possibilities.

Contract Signatures. We were recently contacted by the Legislative Auditor's Office regarding our policy on contract signatures. The question concerned whether or not a signed contract had to be in place before work could begin. Our response: Absolutely! The whole essence of the contracting process is that both parties arrive at an understanding of exactly what is expected to take place during the contracted period. To not have a signed contract in place is surely courting disaster and an outright poor business practice for a million reasons. Up until now, the State Procurement Bureau did not have a specific written policy requiring signed contracts—because we made the mistake of "assuming" that agencies wouldn't be operating any other way. Well, we were wrong and will now be developing language in rule and policy mandating that no work begin until all parties have signed a contract. Although the law, in some instances, does permit "oral contracts," the new

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requirement from this office, to apply to all agencies, will be that all procurement contracts must be reduced to writing and fully executed before any work may begin. If you know of some instance where this will be an unsolvable problem for your agency, let us know.

DATA MINING

Many of you have received requests to provide agency information under Montana's "right-to-know" statutes. Some of you have been involved in providing information for a litigation discovery request. "Data mining" is a new form of seeking information under the "right-to-know" statutes. The private sector requests information which it then sells to others. We have just received two such requests, one of which could take dozens of hours of public employee time to accurately respond.

What must you do when you get such a request?

Section 2-6-104, MCA, makes public records open for inspection during normal office hours. However, you can require that a requestor make an appointment to look through paper records and you can charge a reasonable copying fee. Remember it is your responsibility to ensure that records made available do not contain items for which individuals have reasonable privacy expectations.

Section 2-6-110, MCA, sets the rules for providing information that is held in an electronic format. You can charge a fee for the actual cost of purchasing any electronic media used for transferring data, (2)(a). You can charge for computer time expenses incurred to process the information, (2)(b). You can charge for staff time used to make the copies, at a grade 10 market salary rate, after the first half hour of copying services has been provided, (2)(e). It is unclear how much massaging of data we are required to do for a requestor and whether we can charge the actual cost of the employee's time who undertake that work.

It is also unclear how much we can charge for the work our staff has to undertake to find, sort,

identify, and remove confidential material. The general rule is that records are available. In a still effective April 9, 1996, policy memo, former Governor Racicot pointed out that there is no general statutory authority to charge for this type of work.

It is the opinion of our Chief Counsel, Dal Smilie, that when such a request is received, you must take reasonable steps to provide the information requested. You may want to seek legal counsel within your agency if the request seems unduly large or if it requires massaging the information you have to meet the data miner's request.

COMING IN THE NEXT ISSUE OF THE NEWSLETTER: *What to do with requests from businesses to obtain a list of current contractors or vendors and specific information about them.*

FACILITIES MANAGEMENT NEWS AND NOTES

Helena Area Agencies on the Move. Many state agencies will be relocating to new offices throughout the year. Following is a projected schedule of some of the current changes (moves are subject to change):

July 2002 Department of Commerce: Relocation of entire agency from 1424 9th Avenue & 836 Front Street to the Old Federal Building.

July 2002 Department of Justice: Some operations perations to 1712 9th Avenue (Old P.E.R.D. Building)

December 2002 DNRC (Water Resources Div.): Relocating to 1424 9th Avenue (Current Commerce Building)

THINK ABOUT IT

"I'd have written you a shorter letter if I'd had more time."

Abe Lincoln

PRINT AND MAIL SERVICES NEWS AND NOTES

Gary Wolf Retires! On May 31, Gary Wolf retired as the Bureau Chief of the Print and Mail Services Bureau after 28 years of service to the State. Gary began his career with the Cartography Bureau at DNRC and was instrumental in the creation of the Publications and Graphics Division at DOA. He initially served as Assistant Administrator for the Division and then Bureau Chief following reorganization. Over the last two years and following a further reorganization, Gary assumed the management of the state's central mail facility in addition to his responsibilities for overseeing the state's printing. Gary's retirement plans include travel and keeping up with the e-Bay auctions. We wish him well!

New Bureau Chief Announced. Leona Olsen is the new Bureau Chief of the Print and Mail Services Bureau. Leona brings with her an extensive background in journalism, advertising, and public procurement. She has served as the purchasing agent for P&G/Print Services for the last 15 years and has a strong commitment to extraordinary customer service. Welcome Leona!

New Equipment. Print Services recently added a Minolta QMS color laser printer to its desktop publishing capabilities. The new printer will allow output of color laser prints at 8-1/2 x 11 inches, 8-1/2 x 14 inches, and 11 x 17 inches. These laser copies provide high quality color originals that can be used to obtain color photocopies.

The Minolta QMS has an output of 1200 dpi, which gives a fine quality to your color prints. Print Services can export files from PC based programs on disk, Zip disk or CDs such as PageMaker, Publisher, Word, Power Point, Corel WordPerfect, Photoshop, Illustrator, Adobe Acrobat and Corel Draw. Desktop charges will include a minimum \$8.00 computer time fee, \$1.00 per sheet for 8-1/2 x 11, and \$1.50 per sheet for 8-1/2 x 14 and 11 x 17. Neighborhood Office in Helena has the term contract for color photocopy production.

Color laser proofs can also be made, but remember that laser prints from computer files print in a *Red, Green, Blue* color combination, which does not always depict the true colors that will be printed, but are intended only to give a perspective of how the piece will appear in full color. If you have any questions on color laser prints, you can contact Print Services at 444-3053

"GREEN PURCHASING" UPDATE FOR STATE AGENCIES RECEIVING FEDERAL FUNDS

Last summer we published an article about "Environmentally Preferable Purchasing" (EPP) stating that the SPB would begin to explore the possibility of incorporating EPP policies into the procurement of state supplies. Since then, we have learned that Section 6002 of the Federal Resource Conservation and Recovery Act (RCRA) and Presidential Executive Order 13101 place some buy-recycled requirements on (a) state agencies using appropriated federal funds, and (b) any contractors with these agencies (with respect to work performed under the contract) for a procurement of those items designated by EPA.

The requirements apply when a state agency/contractor procures designated items where the price of an item exceeds \$10,000 or the quantity of the item purchased in the previous years exceeded \$10,000. The \$10,000 threshold applies to all purchases made by an entire agency rather than regional or local offices.

The EPA Comprehensive Procurement Guidelines program has to date designated 36 products in 8 product categories, including: construction products; landscaping products; non-paper office products; paper and paper products; transportation products; and vehicular products.

For more information, access the following website: <http://www.ofee.gov/eo/rcra2.htm> or call the Office of the Federal Environmental Executive or the White House Task Force on Waste Prevention and Recycling at (202) 564-1297 or e-mail them at task_force@ofee.gov.

QUESTION OF THE QUARTER

I have a requisition for video services for \$45,000 and want to award on criteria other than low bid. Do I have to go through the process of issuing an RFP or can I use an IFB and list the evaluation criteria?

If you intend to award on criteria other than "low bid," you must use the competitive sealed proposal (RFP) process set forth in section 18-4-304, MCA. Although the statute dealing with competitive sealed bidding (section 18-4-303, MCA) includes language that says "[b]ids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability," we interpret that to mean that you can include specifications that address such things as delivery, testing, workmanship, inspection, and suitability for a particular purpose. In other words, these are all criteria that would go to determining "responsiveness" or "acceptability" and once it is determined that a bid is responsive and acceptable, you must award to the low bid.

You could consider using the two-step process detailed in section 18-4-303(8), MCA. In step one, the vendors respond to an IFB without any mention of price. From there, if they are among the top scorers, they proceed to step two of the process and the low price wins. Please call us if you are thinking about exploring this option.

Although the RFP process may seem cumbersome for small projects, it still is the only alternative under existing law to award on criteria other than cost.

Term contract number 462-R for Pure Alcohol has been renewed for the period July 1, 2002, through June 30, 2003.

The renewal options for the Carhartt Products term contract expired in May. A slightly scaled down version is currently out to bid.

The Lab Chemicals and Supplies (SPB-01-11P) and Temporary Services (SPB-01-15P) term contracts are up for renewal in the near future. Please submit any comments regarding these two contracts to Penny Moon at 444-3313 or pmoon@state.mt.us.

Due to lack of usage, the Legal Transcription Services term contract (SPB-01-16P) will likely not be renewed after October 31, 2002.

The term contract for the Drug and Alcohol Testing Program (451-B) will be renewed for the period July 1, 2002, through June 30, 2003.

ON THE LEGAL FRONT

State Wins Contested Case Hearing ... But. Since May of 1999, the State has been involved in a contested case hearing with a company over our rejection of a late proposal. In May 2002, the hearings officer found in the State's favor in ruling that we did not violate the law by rejecting the proposal. But, as permitted by law (section 18-4-242, MCA), the plaintiff has now appealed this case to the district court. Under the judicial review process, a judge will now review all the "findings of fact and conclusions of law" established in the hearing officer's recommendation before issuing a final decision in this case. In addition, however, the protestor has also challenged the constitutionality of the protest law found in Section 18-4-242, MCA.

PURCHASING USERS GROUP

The next meeting of the Purchasing Users Group will be Thursday, October 24, 2002, from 1 p.m. to 4 p.m. in the Public Health and Human Services Auditorium, 111 North Sanders in Helena.

ABOUT THIS NEWSLETTER

"GSD Update" is published quarterly by the General Services Division of the Montana Department of Administration. For more information, or to get on the mailing list, contact us at (406) 444-2575. Our address is: P.O. Box 200135, Helena, MT 59620-0135. Fax number: (406) 444-2529. Website address: www.discoveringmontana.com/doa/gsd.